

18 NOV 1975

DCI/IC-75-3967

MEMORANDUM FOR: Director of Central Intelligence
SUBJECT : Legislative Project of Interest to
[REDACTED]

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1. This memorandum provides for your information the current status of the paper on proposed legislation being developed as a result of the ICG discussion of 10 November 1975 in the ICS Conference Room. Your comments and/or further guidance would be appreciated.

2. Attached are papers representing the current level of development of the study:

Tab A	Areas of Potential Legislation Relating to the Intelligence Community, 14 November 1975
Tab B	CIA Legislative Objectives
Tab C	Issues Raised by the Senate Select Committee
Tab D	Issues Raised by the House Select Committee
Tab E	Rockefeller Commission Legislative Recommendations (with accompanying DCI comments as forwarded to the President, 23 June 1975)
Tab F	Murphy Commission Legislative Recommendations Affecting Intelligence (with accompanying DCI comments as forwarded to the President on 17 and 29 July 1975)

3. As you will recall, [REDACTED] proposal was three-pronged:

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a. Legislation the Senate and House Select Committees may recommend;

(This is ^{partially} addressed in Tabs C and D above.)

b. Legislation proposed by the Rockefeller Commission, Murphy Commission, in legal journals, etc., in recent times;

(This is addressed in part in Tabs ^AE and F above.)

c. Legislation which the DCI and the Intelligence Community consider it would be important to have.

(This is addressed partially in TAB B)

4. The report to which these tabs relate is still in the works, but a paper for your review is expected by close of the week. This paper will address all three of the elements raised by Mr. Marsh, with primary emphasis on the legislative actions which it is proposed you support. One of the difficulties, as you can perceive from Tabs C and D, is getting a handle on what the Select Committees may be coming up with. Also, our own druthers need to be crisped down into simple iterative statements if we are to provide the kind of matrix has in mind.

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/s/

Lieutenant General, USA
Chairman, Action Plan Task Group

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Attachments:
as stated

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14 November 1975

AREAS OF POTENTIAL LEGISLATION RELATING TO THE INTELLIGENCE COMMUNITY

I. Organization and Functions.

A. Community

1. The role, authority, responsibility, organizational position, background, and term of office, of the senior foreign intelligence officer
2. Restructuring the National Security Council
 - a. Include designated Members of Congress (e.g. majority and minority leaders of each House).
 - b. Enlarge membership to include broader Executive branch representation (e.g. add Secretaries of Treasury and Agriculture).

B. Central Intelligence Agency

1. Appointment of two Deputy Directors
2. Role, authority, and external reporting responsibilities of the Inspector General
3. Should CIA retain responsibility for both intelligence collection and intelligence production, and if not, how should these functions be reorganized?
4. Should CIA retain responsibility for any types of covert action? Should the military be responsible for paramilitary covert actions?
5. Should CIA retain responsibility for clandestine collection?

II. Oversight

A. Executive

1. Expand role and authority of PFIAB
2. Should IG report directly to external oversight body
3. OMB role
4. Should the President be required to personally certify additional activities? /

B. Legislative

1. Composition and functioning of congressional oversight committee or committees
2. Degree of Agency reporting requirements on:
 - a. Covert actions
 - b. Liaison relationships and agreements with foreign countries
 - c. Substantive intelligence
3. Role of GAO
4. Requirement of approval of certain activities by oversight committees
5. Specific criminal penalties for perjury in congressional testimony

C. National Security Agency

1. Should NSA have a statutory charter?
2. Should it remain in DoD? If not, should it be an independent agency?
3. Should NSA have a civilian chief?
4. Should the NSA Director be subject to Senate confirmation?
5. Should NSA and the service cryptological agencies be merged?

D. National Reconnaissance Office

1. Should it be retained in DoD?
2. Should it have a statutory charter?
3. Should there be a Director of NRO, and should his appointment require Senate confirmation?

E. Military Intelligence

1. Does the Defense Intelligence Agency duplicate the work of the individual service intelligence departments and other independent agencies to the extent that it can be eliminated?
2. If it is to be retained, what should be the functions of DIA?

F. Department of State

1. Should the Bureau of Intelligence and Research (INR) or foreign service officers assume a greater role in overseas human source intelligence collection?
2. Authority of Ambassadors regarding intelligence in the country they reside in?
3. Role of Inspector General of Foreign Affairs
4. Role of Secretary of State for covert actions

III. Budget Issues

1. Fiscal authority of the senior U.S. foreign intelligence officer
(on what budgets does he have approval authority? Recommendation only?
No review?

2. Open versus a closed budget
3. GAO audit authority for intelligence organizations
4. CIA no-year appropriations
5. Use of contingency reserve
6. Procurement practices
7. Full costing of intelligence (i.e., complete identification of all intelligence and intelligence-related activities, and inclusion of their costs in the overall intelligence budget)
8. Budget clandestine activities through State and DoD
9. Annual authorization for CIA

IV. Restrictions

1. Prohibitions on domestic activities on the part of foreign intelligence organizations (e.g., mail opening, infiltration of dissident groups, electronic surveillance, inspection of tax returns, maintenance and dissemination of information on U.S. citizens, testing and experimentation such as drugs and technical collection devices, illegal activities, etc.)
2. Specify acceptable domestic activities of CIA
3. Restriction on proprietaries and the use of non-official cover
4. Restrict activities the Director can undertake pursuant to his responsibility to protect intelligence sources and methods.

5. Criminal and personal liability of intelligence personnel
6. Covert action
7. Transactions with former employees
8. Establish criminal penalties for violations of domestic proscriptions
9. Require CIA to notify Americans when the Agency is collecting intelligence from them in the United States.

V. Coordination

1. Extent of operational authority of the DCI
2. CIA-FBI relationships
3. Information exchange between agencies, especially CIA information
4. Protection of intelligence sources and methods
5. Relationship of agency and agency-related activities to regulatory agencies, rules, and regulations (e.g. IRS, SEC)
6. Provision for official cover arrangements
7. Authority for collection and dissemination of economic, drug, terrorist intelligence

*Make this a
more prominent
aspect*

VI

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ISSUES AND ANSWERS SERIES: PROBLEM NO. IX

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Major CIA Legislative Objectives

1. Problem

In light of the inevitability of changes to the National Security Act, identify the legislative objectives of the Agency.

2. Recommendations

The Agency should seek changes in its legislative charter to clarify the ambiguities of the 1947 and 1949 Acts and to bring these Acts in line with present-day realities and optimum future possibilities. (A separate paper will address the full range of legislative proposals which have been addressed in the findings of Commissions and which have been and most likely will be, addressed on the Hill.) The OLC and OGC should assemble appropriate legislative package(s) at least in the following areas, and such other topics as their current studies underway determine to be appropriate for legislative treatment:

A. Restrictions on US Activities and those Relating to US Citizens

A primary legislative objective, which has support in the Congress is to clarify the proper scope of activities for CIA. Clearly, the key proscription of the 1947 Act "That the Agency shall have no police, subpoena, law enforcement powers, or internal security functions." ^{as amended, 1950, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025} Any new language should pertain not only to powers and functions proscribed but also to the type of activities authorized. Previous bills drafted by the Agency and the proposed Executive Order should be the starting point.

B. Clarification of Protection of Intelligence
Sources and Methods Responsibility

Critics of the Agency are sure to demand clarification of this statutory responsibility which has been cited as the basis for certain Agency actions of questionable propriety. Directors of Central Intelligence have also pointed to the lack of specific guidance in this area. Finally, citing the need to clarify the extent of the Director's authority in the United States, the Rockefeller Commission proposed, and the Agency concurred in, language changes. Important objectives in clarifying the Director's responsibility in this field include: 1) assurance that the scope of the responsibility is not unduly restricted vis a vis classes of individuals (employees, applicants, former employees, and others associated with the Agency, etc.) or overseas, and 2) ~~that retention of~~ the responsibility ~~is retained~~ by the Director rather than shifted to the Agency (as proposed by the Rockefeller Commission), and 3) retention of the language as words of art for court cases and exemption from various statutes including Freedom of Information Act. Again, the proposed Executive Order would be a suitable guide.

Related to the above clarification is the enactment of the Director's proposal for criminal sanctions to deter the unauthorized disclosure of intelligence sources and methods. (Recommendations on the tactics of enacting this very significant legislation is the subject of a separate paper.) *Amber*

C. Covert Action

Section 662 of the Foreign Assistance Act restricts the Agency from non-intelligence gathering activities unless the President finds that each such proposed operation is important to the national security, and the findings are reported to the appropriate committees of Congress (now six).

This Section should be repealed if at all possible and in its place should be a provision which would require all activities undertaken pursuant to Section 102(d)(5) of the 1947 Act to be reported to legislative oversight and appropriation committee(s). This would serve the interests of: 1) eliminating the use of the annual authorization for foreign assistance and similar annual enactments as a suitable vehicle for amendments on covert actions be they general or specific; 2) eliminating the need for a written audit trace to the President of the United States and 3) providing enhanced security for sensitive information by limiting access and proliferation.

D. Statutory Duties of the DCI and CIA

The present-day and foreseeable future charter of the Agency should be covered by express statutory authority, e.g., collection of intelligence. Moreover, enhanced authority for the Director in the Intelligence Community or the reorganization of that office (e.g., along the lines of the proposals suggested in the Taylor report) should be reflected in statute.

E. Express Authority to Administratively Adopt
Certain Provisions of Law Relating to Other Agencies

Under current law the Agency does not have available to it an annual authorization or other suitable annual legislative vehicle ^{Government could} ~~which it could~~ use to update to changes in personnel concepts, benefits, and programs for which specific statutory authorization is normally required. The Agency's position that the penumbra of section 8(a)(1) and (2) of the 1949 Act provides the Director ^{with} ~~which~~ authority to adopt other provisions of law for the Agency and its employees in these areas should be ratified by express statutory authority. Such express statutory authority would ~~be~~

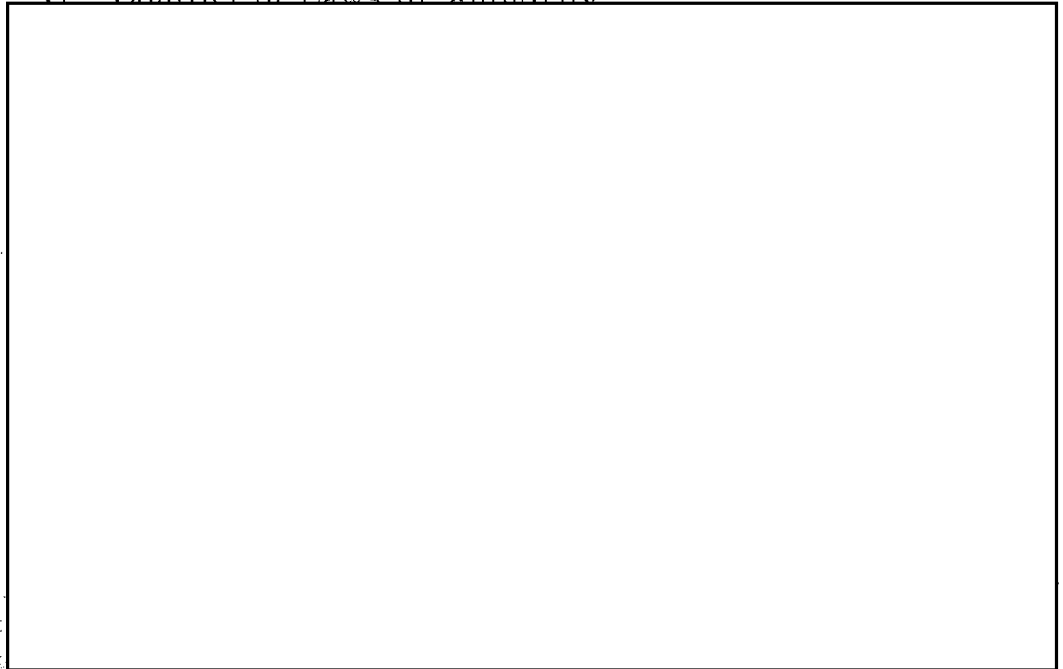
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pattern, a provision ~~which has been~~ proposed for CIARDS which would permit administrative adoption of liberalizations in the Civil Service retirement system. Such a provision not only clarifies the authority in question but also reduces the number of occasions when it will be necessary in the future to seek amendments to CIA legislation.

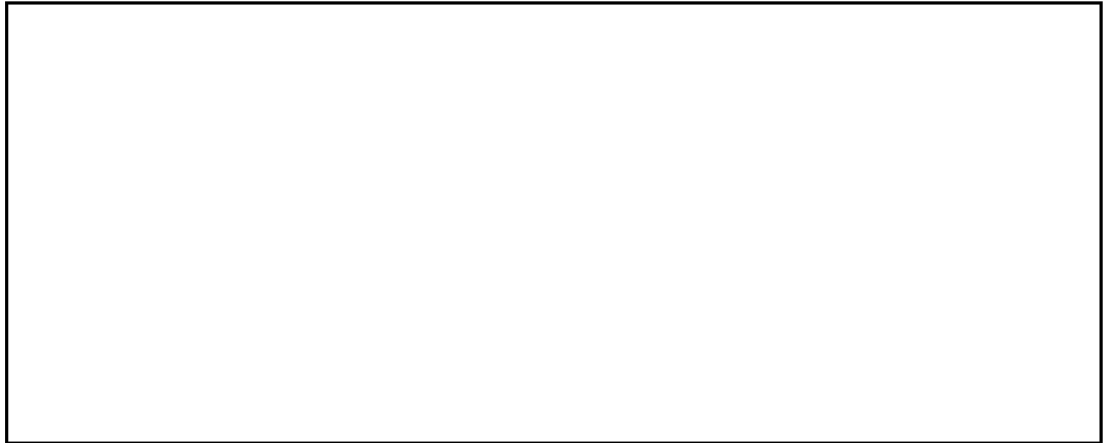
F. Procurement

Lots of luck
There are at least two technical deficiencies in our present procurement authorities. One is the lack of express authority to dispose of property, and the other is the lack of express authority to adopt the various amendments to the Armed Services Procurement Act which have been enacted subsequent to the 1949 Act. These deficiencies can be remedied by a general administrative adoption authority as discussed in the previous section.

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G. Conflict of Laws or Authority





I. Housekeeping

The present statutes applying to the Agency specifically, particularly the 1949 Act, are replete with outdated references which should be technically clarified.

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13 November 1975

Issues Raised by Senate Select Committee

There are ^{Six}~~four~~ major lines of inquiry being pursued by the Senate Select Committee:

- a) Basic Authorities (statutory, legal and constitutional) under which CIA has conducted its activities since its establishment in 1947.
- b) External controls (by Presidents, the NSC, the Special Groups, Congress) to ensure that CIA's activities are within proper limits and are in support of or at least consistent with U. S. national security policies.
- c) Internal controls (by DCI, regulation, explicit directive, management procedures, follow-up inspections) to ensure that CIA's activities and officers charged with carrying them on are directed and monitored.
- d) The value of CIA's activities (collection, analyses, covert actions) when weighed against the risks involved, the changing international scene, the image of the United States, and the cost to the American taxpayer.

e) The involvement of CIA with U. S. citizens (individuals, corporations, academic institutions, media, and religious groups) at home and abroad and whether these relations violated the rights of U. S. citizens, whether CIA was seeking influence in domestic affairs, and whether CIA conveyed or received favors or rake-offs.

f) The role of the DCI as foreign intelligence advisor to the President, head of the intelligence community, head of CIA, - whether he should remain with CIA, whether he should have genuine control of the community, and the nature of his responsibility to the legislative as well as the executive branch.

Following is a listing of specific issues which have arisen. They all fall into one or more of the foregoing categories.

1. The role of the Agency in assassination plotting. The key issue here is the role of CIA and higher authority. Subsumed are questions as to whether such planning is within CIA's charter; how could such planning go forward without the DCI's knowledge; is it an appropriate American activity?

COMMENT: Until we have some clearer idea of the thrust of the SSC assassination report (which will reveal testimony we don't have), it is difficult to formulate a position paper. However, if we wait until the report is issued, our rebuttals will never catch up with the allegations.

Several of us (Breckinridge and Knoche) have agonized over how to put this matter into perspective, but with little success. It is one of those moral-political climate of the times things about which it is hard to make a helpful recommendation.

*Just say
the Agency's
rules are
now clear
against
it*

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10. Human collection. The key issues here are who should collect and are the returns worth the risks we run? Bill Nelson has made the Agency's case quite well.

11. Paramilitary operations. The key issues here are similar to those in covert action. Are such operations justified? If so, who should do them? Frankly, (this whole paper is frankly), we are talking about the past. However, the issue of a paramilitary capability remains alive so long as the issue of covert action remains alive. We should be thinking in terms of who and how much?

Yes

12. Analytical, estimative, and predictive processes. The key issue here is the quality and the utility of our finished intelligence production. There are some false issues kicking around. One is the amount of money devoted to analysis as compared to collection. Another is a largely semantical dispute (there are some personal equities and prejudices, too) over the merits of the NIO versus BNE/ONE. In any event, the key issues are the objectivity of finished intelligence, practical limits on predictability on specific issues,

and, in the final analysis, the impact of our intelligence on policy decisions.

13. Detailees. The key issue here has been raised with the HSC, but the SSC has felt obliged to go through the motions, too. Our position (should we need it for the SSC) seems quite clear. There is an overt exchange of employees throughout government. Nothing devious about it.

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15. Liaison with police, LEAA, DEA, etc.

The issue here is why was CIA cooperating with domestic law enforcement agencies. The SSC answer is not yet discernible. Our ^{position}~~problem~~ is that excessive cooperation did occur but has been stopped.

16. Counter-intelligence. This is a relatively new issue for the SSC (Burt Wides has been talking to Angleton). One question will be the proper

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LEGISLATIVE RECOMMENDATIONS IN THE
"REPORT TO THE PRESIDENT BY THE COMMISSION ON CIA ACTIVITIES
WITHIN THE UNITED STATES" (ROCKEFELLER COMMISSION)

1. The Rockefeller Commission included proposals on new legislation in five of the total of 30 recommendations in its report, as follows:

- No. 1 Amend Section 403 of National Security Act of 1947
- No. 3 Establishment of a Joint Committee on Intelligence within the Congress
- No. 4 Making the CIA budget public to some extent
- No. 8 Providing two deputies for CIA
- No. 21 Safeguarding the Constitutional rights of U.S. citizens

2. The attached pages quote the recommendations and the DCI responses which were forwarded to the President on 23 June 1975.

USIB/IRAC-D-2.11/1
23 June 1975

Recommendation (1)

Section 403 of the National Security Act of 1947 should be amended in the form set forth in Appendix VI to this Report. (Reproduced in full on following page.) These amendments, in summary, would:

- a. Make explicit that the CIA's activities must be related to foreign intelligence.
- b. Clarify the responsibility of the CIA to protect intelligence sources and methods from unauthorized disclosure. (The Agency would be responsible for protecting against unauthorized disclosures within the CIA, and it would be responsible for providing guidance and technical assistance to other agency and department heads in protecting against unauthorized disclosures within their own agencies and departments.)
- c. Confirm publicly the CIA's existing authority to collect foreign intelligence from willing sources within the United States, and, except as specified by the President in a published Executive Order, prohibit the CIA from collection efforts within the United States directed at securing foreign intelligence from unknowing American citizens.

¹The Executive Order authorized by this statute should recognize that when the collection of foreign intelligence from persons who are not United States citizens results in the incidental acquisition of information from unknowing citizens, the Agency should be permitted to make appropriate use or disposition of such information. Such collection activities must be directed at foreign intelligence sources, and the involvement of American citizens must be incidental.

Note: Appendix VI of the Commission Report provides:

In Recommendation (1), the Commission proposes that 50 U.S.C. Section 403(d) be amended to read (Additions are italicized; deletions are marked through):

(d) For the purpose of coordinating the foreign intelligence activities of the several government departments and agencies in the interest of national security, it shall be the duty of the (Central Intelligence) Agency, under the direction of the National Security Council--

(1) to advise the National Security Council in matters concerning such foreign intelligence activities of the government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such foreign intelligence activities of the departments and agencies of the government as relate to the national security;

(3) to collect, correlate and evaluate foreign intelligence relating to the national security, and provide for the appropriate dissemination of such foreign intelligence within the government using where appropriate existing agencies and facilities:

Provided, that except as specified by the President in a published Executive Order, in collecting foreign intelligence from United States citizens in the United States or its possessions, the Agency must disclose to such citizens that such intelligence is being collected by the Agency.

Provided further, that the Agency shall have no police, subpoena, law enforcement powers, or internal security functions:

Provided further, that the departments and other agencies of the government shall continue to collect, evaluate, correlate and disseminate departmental intelligence:

I fully concur in the recommendation of the Commission that the National Security Act be amended to clarify the duties of the Agency by inserting the word "foreign" before the word "intelligence" at appropriate places in the Act. In fact, this suggestion first arose at my confirmation hearing in 1973.

I concur with the added provisions clarifying the Agency's role in the collection of foreign intelligence from US citizens.

I have reservations about the proposal of the Commission to amend the Act to shift from the Director of Central Intelligence to the Central Intelligence Agency, responsibility for protecting intelligence sources and methods from unauthorized disclosure. The DCI, as head of the Intelligence Community, is well placed to protect the Community's interest in sources and methods of foreign intelligence, but CIA is less well suited to cover these matters as they affect other agencies. The proposed amendment could be read to diminish the DCI's coordinating function in the Intelligence Community. I believe the purpose of the Commission in recommending the change can be carried out by retaining some of the limitations in the proposed subparagraph (6) but assigning the responsibility to the Director of Central Intelligence.

In addition, changing the wording from "protecting intelligence sources and methods from unauthorized disclosure" to "protecting sources and methods of foreign intelligence from unauthorized disclosure" eliminates terminology which is well recognized and for which there is judicial interpretation and precedent in several cases.

I am also concerned that subparagraph (6) may not afford sufficient authority to protect intelligence sources and methods information under the Freedom of Information Act. That Act exempts from its mandatory exposure provisions matters "specifically exempt from disclosure by statute." Appropriate language should be included in subparagraph (6) to make clear that that subparagraph is an exemption statute for Freedom of Information purposes.

Recommendation (3)

The President should recommend to Congress the establishment of a Joint Committee on Intelligence to assume the oversight role currently played by the Armed Services Committees.

Response

As you know, I concur in this recommendation.

Recommendation (4)

Congress should give careful consideration to the question whether the budget of the CIA should not, at least to some extent, be made public, particularly in view of the provisions of Article I, Section 9, Clause 7 of the Constitution.¹

Response

In the past I have taken the position that this question should be resolved by the Congress but that I could not in good conscience recommend publication of all or part of the intelligence budget. I believe I must now recommend that the Agency budget and certain classified intelligence programs of the Department of Defense remain fully classified and nonidentifiable. I do this despite the recommendation of the Commission and its reference to Article I, Section 9, Clause 7, of the Constitution.

With respect to the constitutionality of the present procedure, a recent attempt to litigate this question did not reach the substance; the litigant having been defeated on the issue of standing to sue. Richardson v. United States, 418 U.S. 166 (1974). There is, however, considerable historical precedent for budget secrecy, going back to debates in the Constitutional Convention, the use of a secret fund during the administrations of Washington and Madison, and a secret appropriations act in 1811. Congress most recently endorsed the secrecy of intelligence budgets in June 1974 when the Senate rejected an amendment to the Department of Defense Appropriations Act of 1975 which would have required that the total budget figure for intelligence purposes be made public. In addition, I believe that present procedures are fully in accord with the Constitution. Agency appropriations are an integral part of appropriations made by law and are reflected in the Treasury's Statement and Account of Receipts and Expenditures in compliance with the cited provisions of the Constitution.

¹"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

On the merits of the question, aside from the constitutionality, my belief that this budget should remain secret is based on the following:

a. Public disclosure of Intelligence Community budget data, or the budgets of the individual agencies which make up the Intelligence Community, could provide potential enemies with considerable insight into the nature and extent of our activities.

b. Publication of part of the budget, as suggested by the Commission, would raise, in my view, extensive congressional debate as to what matters were included and what matters were not included in the published totals, leading to a rapid erosion of the secrecy of the portions withheld.

c. The same question would immediately arise with respect to the publication of the total CIA budget, a total Community budget, or any other figure covering "intelligence." An immediate requirement would be levied to explain precisely which of our intelligence activities were covered in the published total and which were not. As you know, this is a difficult matter to determine within classified circles due to the difficulty of determining at what point intelligence expenditures stop and operational expenditures begin (the radar on a destroyer; tactical air reconnaissance on the battlefield; the reporting as differentiated from the representational and other functions of attaches, foreign service officers; etc.).

d. Publication of any single figure with respect to intelligence would, in my view, quickly initiate curiosity and investigation by the press and others as to exactly how the figure was arrived at and what its component elements were. This is suggested by the history of disclosure of AEC budget materials and related information by both the Executive Branch and the Congress.

e. Publication of any figure with respect to intelligence will result in questions and discussions of any changes or trends developed in succeeding year figures. Any change in the basis on which the figure was computed or any change in its level will generate a demand for explanation and tend to reveal the details of the figure and programs supported by it.

Thus, I must recommend that the CIA budget and certain other highly sensitive intelligence programs remain classified and nonidentifiable in the Department of Defense budget.

a. The Office of Deputy Director of Central Intelligence should be reconstituted to provide for two such deputies, in addition to the four heads of the Agency's directorates. One deputy would act as the administrative officer, freeing the Director from day-to-day management duties. The other deputy should be a military officer, serving the functions of fostering relations with military and providing the Agency with technical expertise on military intelligence requirements.

b. The advice and consent of the Senate should be required for the appointment of each Deputy Director of Central Intelligence.

Response

I endorse this recommendation though I envision its implementation in somewhat different fashion. With the establishment of a Deputy Director charged specifically with CIA management and representation responsibilities, the other (military) Deputy could most effectively perform the functions cited in the Commission Report if he were primarily concerned with management of those Intelligence Community responsibilities given to me under the President's letter of November 1971. Thus, I would propose that the existing position of Deputy to the DCI for the Intelligence Community be the basis for defining the responsibilities of the military Deputy Director. Should expected congressional consideration of the DCI's role within the Intelligence Community produce significant changes in this role, this recommendation will obviously be affected. While it might be undesirable to specify this in legislation, I believe that the Deputy Director principally concerned with management of CIA should be both a civilian and a career Agency employee. This last comment in no way reflects upon the high quality of the military Deputy Directors who have served this Agency in the past; it merely reflects the experience that such an outsider is normally less able to conduct the detailed management of the Agency contemplated by the Commission's recommendation than is a career Agency employee. This is especially true in the case in which a career Agency employee has been the Director, as in such

situations there has been a natural tendency for management decisions to be made by the Director rather than delegated to the Deputy. CIA has, however, been exceedingly well served by the high quality of a number of Deputy Directors of military background who have made a unique contribution in intelligence matters for which they were particularly fitted as well as being excellent helpers and independent advisors to the Director, himself.

Recommendation (21)

The Commission endorses legislation, drafted with appropriate safeguards of the constitutional rights of all affected individuals, which would make it a criminal offense for employees or former employees of the CIA willfully to divulge to any unauthorized person classified information pertaining to foreign intelligence or the collection thereof obtained during the course of their employment.

Response

On 23 April 1975 I submitted to the Office of Management and Budget proposed legislation in line with this recommendation. I had submitted similar legislation in January 1974, which was not introduced, and I have vigorously pursued the objectives of this proposal with the Congress, the Department of Justice, and other interested departments and agencies since that time. It has been evident to this Agency for many years that existing criminal law is inadequate and provides virtually no enforceable sanctions against disclosure of intelligence sources and methods to unauthorized persons. This is because to prosecute under existing law requires disclosure in open court of further sensitive information as well as confirmation of the information disclosed by the person being prosecuted. In very recent years, with the Government's inability to prosecute in well known cases of disclosure by former employees, the need for improved criminal legislation has become evident to many outside of the Intelligence Community. The legislation which I have proposed meets, I believe, all of the standards of this recommendation including particularly safeguards for the constitutional rights of all affected individuals. It would permit prosecution only of persons authorized to possess the information disclosed or who possessed it by virtue of an association with the Government. It specifically precludes prosecution of newsmen or other recipients of information disclosed in violation of the law.

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LEGISLATIVE RECOMMENDATIONS RELATING TO INTELLIGENCE
IN THE REPORT OF THE COMMISSION ON THE ORGANIZATION
OF THE GOVERNMENT FOR THE CONDUCT OF FOREIGN POLICY
(MURPHY COMMISSION), JUNE 1975

1. The Director of Central Intelligence provided comments to the President on seven Murphy Commission recommendations involving proposed legislation which would affect the Intelligence Community. (These seven were among the 33 recommendations on which the DCI commented, out of a total of 190 recommendations in the overall report.)

2. The seven included:

- No. 47 Retitle CIA as the Foreign Intelligence Agency
- No. 51 Amend PL-93-559 to require reporting covert action to a proposed Joint Committee on National Security
- No. 169 Congressional adoption of concurrent resolution to require both Legislative and Executive Branch action as basis for any national commitment
- No. 173 Congress to establish a comprehensive system for classification
- No. 180 Establishment of a Joint Committee on National Security
- No. 181 Jurisdictions and authorities of the Joint Committee on National Security
- No. 182 The Joint Committee on National Security to consider creation of a statutory system of information classification and provide authority for annual authorization of funds for the Intelligence Community

2. The attached pages quote the recommendations and the DCI responses which were forwarded to the President on 17 and 29 July 1975.

RECOMMENDATION (47)

The CIA should be retitled the Foreign Intelligence Agency (FIA), and its Director the Director of Foreign Intelligence (DFI).

I see no particular advantage to be gained by retitling the CIA as the Foreign Intelligence Agency (FIA) or changing the title of the Agency head to the Director of Foreign Intelligence. The change would be cosmetic and not substantive. It could do violence to the concept of "central intelligence" which was the primary purpose for the creation of CIA.

Putting more stress on the fact that the responsibilities of the DCI and the CIA are limited to foreign intelligence can be accomplished by inserting "foreign" in appropriate places in the basic legislation--as already has been proposed both by me and the Rockefeller Commission.

RECOMMENDATION (51)

PL-93-559 be amended to require reporting of covert actions to the proposed Joint Committee on National Security, and to omit any requirement for the personal certification of the President as to their necessity.

The establishment of a single, small and select joint committee of the Congress with a clearly defined role which could include a review of covert action programs would limit the proliferation of sensitive information. I concur in the Commission's recommendation that PL-93-559 be amended to omit any requirement for the personal certification of the President.

RECOMMENDATION (169)

The Congress should adopt, by concurrent resolution, a statement that a national commitment--meaning a promise to assist a foreign country, government or people by the use of the armed forces or financial resources of the United States, either immediately or upon the happening of certain events--results only from affirmative action taken by the Legislative and Executive Branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment.

The rationale underlying this recommendation relates to those matters for which the Congress shares constitutional responsibility. The Commission recognizes that in the future, as in the past, the Executive Branch must conduct United States relations with other countries and that the President in fulfilling his constitutional responsibilities must have the flexibility to meet international demands of increasing complexity.

I believe that liaison agreements with foreign services for intelligence purposes is an executive function outside the scope of the constitutional responsibility of the Congress. The underlying quid pro quo to support such arrangements does not appear to constitute a "national commitment" as contemplated by the recommendation. However, the definition of "national commitment" (to assist a foreign government by use of financial resources of the United States) could be construed to apply to such intelligence liaison agreements. If so construed, the requirement of public action (treaty, statute or resolution) could not be accommodated without violating commitments of confidentiality, which are underlying pre-conditions for intelligence liaison agreements. Such ambiguity in language could be clarified in the associated legislative history of the proposed concurrent resolution concerning "national commitments."

RECOMMENDATION (173)

We propose that the Congress consider legislation establishing a comprehensive system for classification based on the following guidelines:

- a. The mandatory classification, in one of several degrees of classification, of specified types of information relating principally to the national defense and the sources and methods of intelligence.
- b. The mandatory exemption from classification of other specified types of information, relating principally to U.S. actions in violation of U.S. law.
- c. The discretion, lodged in appropriate officials, to classify or exempt from classification all other information on the basis of specified criteria which balance the need for secrecy against the potential value of disclosure.
- d. A comprehensive system of automatic downgrading and declassification.
- e. The application of specified sanctions to persons violating the terms of the system, including criminal penalties for the unauthorized release of properly classified information, and significant administrative sanctions applicable to overclassification.
- f. The availability of legal process to resolve any questions arising from classification decisions.

I concur with this recommendation which, in proposing mandatory classification for information relating principally to sources and methods of intelligence,* would reinforce my existing statutory responsibility as set forth in the National Security Act of 1947, to protect intelligence sources and methods from unauthorized disclosure.

However, the downgrading and declassification of information which is "born classified" by statute, should be determined by the Federal officer responsible for implementing the mandatory statutory classification and not by an automatic downgrading and declassification system.

The application of criminal penalties to the unauthorized release of such information is strongly endorsed. However, the legal process applied to resolving questions about such statutory classification should provide for an in camera court review whether the classification was a reasonable act, i.e., not arbitrary or capricious. This would ensure that the responsibility lodged by statute for determining classification in the first instance is not transferred to the Judiciary.

* I recommend that the phrase "sources and methods of intelligence" as used by the Commission be defined as follows:

"Intelligence sources and methods means sensitive information concerning:

- a. Methods of collecting foreign intelligence;
- b. Sources of foreign intelligence, whether human, technical or other; or
- c. Methods and techniques of analysis and evaluation of foreign intelligence which, in the interests of the security of the foreign intelligence activities of the United States, have been specifically designated for limited or restricted dissemination or distribution, pursuant to authority granted by law or Directive of the National Security Council, by a department or agency of the United States Government which is expressly authorized by law or by the President to engage in intelligence activities for the United States."

RECOMMENDATION (180)

In the Commission's view, a Joint Committee on National Security should be established. It should perform for the Congress the kinds of policy review and coordination now performed in the executive branch by the National Security Council, and provide a central point of linkage to the President and to the officials at that Council. In addition it should take responsibility for Congressional oversight of the Intelligence Community.

The manner in which Congress organizes itself to conduct congressional oversight of the Intelligence Community is essentially a matter for the Congress to decide. However, I am concerned over the proliferation of access to sensitive intelligence information. The Commission, by stipulating that the proposed joint committee would not substitute for the regular legislative and investigative functions of the present standing committees in each House, would add an additional committee without resolving the issue which concerns me--to reverse the present trend toward increasing proliferation of access to sensitive information. In my view, the need is to establish a single small select joint committee with a clearly defined role to include a review of covert action programs and with exclusive authority of access to sensitive information involving the sources and methods of intelligence. It would seem appropriate that oversight of Agency management, functions and operations be limited to such a committee and to such appropriations subcommittees as may be necessary to consider and oversee the Agency's budget.

RECOMMENDATION (181)

The Commission recommends that the Joint Committee be vested with the following specific jurisdictions and authorities:

- a. Receipt, analysis and referral (along with any recommendations it may consider appropriate) of reports from the President under the War Powers Act.
- b. Receipt and review of analytic products of the intelligence community.
- c. Oversight (in conjunction with the executive branch) of the system of information classification discussed above.
- d. Establishment and maintenance of facilities and procedures for storage and handling of classified information and materials supplied to the Congress.
- e. Establishment of a code of conduct to govern the handling by Committee members of classified or sensitive information.

Parts a and c are outside of my purview. I concur in parts b, d and e.

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